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**Notice of Allowability**

Application No.

09/674,779

Examiner

Padmavathi v Baskar

Applicant(s)

RUELLE, JEAN-LOUIS

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/14/03.
2. ☒ The allowed claim(s) is/are 27, 28, 29, 31, 62, 63, 34, 65, 35, and 53 have been renumbered as 1-10 respectively.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                     |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>11/18/03</u> . |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____  | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                             |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                       |
|  | 9 <input type="checkbox"/> Other   |

  
LYNETTE R. H.  
SUPERVISORY PATENT  
TECHNOLOGY CENTER

### DETAILED ACTION

1. Applicant's after final amendment filed on 10/14/03 is entered. Claims 1-26, 30, 32-33, 36-52, 54-61 and 64 have been canceled. Claims 27, 28, 29, 31, 34, 35, 53, 62, 63 have been amended. New claim 65 has been added. Claims 27, 28, 29, 31, 34, 35, 53, 62, 63 and 65 are pending in the application.
2. In view of amendment to the claims (10/14/03) and the arguments of record (Exhibit A, B, C, D and E) in support of immunogenic fragments containing 15 or 20 contiguous amino acids induce an antibody response and bind to full length polypeptide SEQ.ID.NO: 2, the rejections under 35 U.S.C. 112, first paragraph written description, and scope of enablement are withdrawn.

The amended claims now recite a novel isolated recombinant polypeptide comprising the amino acid sequence SEQ.ID.NO: 2 and immunogenic fragments of said polypeptide containing 15 or 20 contiguous amino acids induce an antibody response and bind to full length polypeptide SEQ.ID.NO: 2.

3. In view of amendment to the claims and the arguments of record the rejection under 35 U.S.C. 102(b) as being anticipated by Helminen et al 1994 is withdrawn as Helminen et al do not disclose an isolated recombinant polypeptide SEQ.ID.NO: 2 comprising the amino acid sequence SEQ.ID.NO: 2.
4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with

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Eric Meade, 11/18/03, the application has been amended as follows:

Claim 62, line 2, before immunogenic, inserted - - 15 contiguous amino acid "

Claim 62, line 2, after fragment, deleted " of (b)" and inserted therefore, - - consists of - -

Claim 63, line 2, before immunogenic, inserted - - 15 contiguous amino acid "

Claim 63, line 2, after fragment, deleted " of (b)" and inserted therefore, - - consists of - -

5. The instant claims define a novel recombinant polypeptide comprising the polypeptide SEQ.ID.NO: 2 from *Moraxella catarrhalis* strain MC2931. This polypeptide has been shown to bind to sera obtained from patients infected with various clinical isolates and is useful for diagnostic assays for detecting the infection caused by various clinical strains of *Moraxella*.

6 Claims 27,28,29,31,62, 63, 34, 65, 35, and 53 are allowed and have been renumbered as 1-10 respectively.

7. The formal drawings submitted on 10/14/03 have been accepted.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Padma Baskar Ph.D. whose telephone number is (703) 308-8886. The examiner can normally be reached on Monday through Friday from 6:30 A.M. to 4:00 P.M. EST

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Padma Baskar Ph.D.

11/18/03